Before the

Federal Communications Commission

Washington, DC 20554

In re application of:	)	
	)	
WORLDCOM, INC , and its Subsidiaries as DEBTOR IN POSSESSION	)	
Transferor	)	
	)	
AND	)	WC Docket 02-215
	)	
MCI, INC., and its Subsidiaries	)	
Transferee	)	
	)	
For consent to transfer of control of licenses and authorizations held by WorldCom in bankruptcy	)	

To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS TO MARGARET F. SNYDER'S MOTION TO DISCLOSE DOCUMENTS

Margaret F Snyder, by her attorneys, hereby replies to the Oppositions to her Motion to Disclose Documents filed by WorldCom, Inc ("WorldCom"), BellSouth Telecommunications, Inc ("BellSouth"), Verizon Communications, Inc. ("Verizon") and SBC Telecommunications, Inc ("SBC") WorldCom, BellSouth, Verizon and SBC, are referred to herein as the "Opposing Parties " In her Motion to Disclose, Ms Snyder requested that certain settlement agreements WorldCom entered into with BellSouth, Verizon and SBC should be made available for public inspection. Nothing contained in the Oppositions supports the Opposing Parties' contentions that the settlement agreements contain confidential information that cannot be disclosed

Each of the Opposing Parties claims that the settlement agreements contain "sensitive data" that "should remain confidential "[1] For example, BellSouth claims that "Disclosure of this information would cause BellSouth competitive harm "[2] While the Opposing Parties unanimously claim that the settlement agreements contain sensitive data, they all fail to identify even the tiniest bit of data that could be considered confidential within the meaning of the Commission's rules[3] Likewise, the Opposing Parties all claim that they would suffer competitive harm. Again, they fail to identify the nature of the harm or explain how they would be injured by the public disclosure of the settlement agreements Having concluded that the settlement agreements contain confidential information, the Opposing Parties cite well-established case precedent that holds that confidential financial and commercial information should not be disclosed.

With all due respect to the Opposing Parties, it is not their responsibility to draw legal conclusions Their mission in the regulatory process is to provide the factual evidence necessary for the Commission to determine whether the settlement agreements, or some portions thereof, are in fact confidential documents. On this point, the Opposing Parties have defaulted

The Opposing Parties all claim that Exemption 4 of the FOIA protects them from public disclosure of the settlement agreements The FOIA "sets forth a policy of broad disclosure of Government documents in order 'to ensure an informed citizenry, vital to the functioning of a democratic society '" *Federal Bureau of Investigation v Abramson*, 456 U S. 615, 621, 72 L. Ed 2d 376, 102 S. Ct. 2054 (1982) (quoting *National Labor Relations Bd v Robbins Tire & Rubber Co* , 437 U.S. 214, 242, 57 L. Ed. 2d 159, 98 S.

[1] Verizon Opposition at p 4
[2] BellSouth Opposition at p 4

Ct. 2311 (1978)) Several exceptions to the rule of mandatory disclosure -- one of which is Exemption Four -- are recognized within the statute, but these exceptions are construed narrowly *Abramson*, 456 U.S at 630.

Under the *National Parks* test, agency-held information is deemed confidential within the meaning of Exemption Four if public disclosure of the information would "have the effect either (1) of impairing the government's ability to obtain information -- necessary information -- in the future, or (2) of causing substantial harm to the competitive position of the person from whom the information was obtained." *Continental Stock Transfer and Trust Co v Securities and Exch Comm'n*, 566 F.2d 373, 375 (2d Cir 1977), citing *National Parks and Conservation Ass'n v Morton*, 162 U.S. App. D.C. 223, 498 F.2d 765, 770 (D C Cir. 1974)

The D C Court of Appeals in *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 298 U S App. D C 8, 975 F 2d 871 (D C Cir. 1992) (*en banc*), superseding 289 U.S. App D.C 301, 931 F 2d 939 (D.C Cir. 1991), *cert denied*, 113 S. Ct 1579 (1993), limited the application of the *National Parks* test to "information a person was obliged to furnish the Government " *Critical Mass*, 975 F.2d at 880. Information provided on a voluntary basis, in contrast, is confidential under *Critical Mass* if "it is of a kind that the provider would not customarily release to the public " Id The Court of Appeals thus made it easier to prove confidentiality where information is volunteered to agencies

The Opposing Parties claim that they voluntarily disclosed the settlement agreements to the Commission Nothing could be farther from the truth. The settlement

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[3] See e g , 47 C F R §0 459 (a)(3-5)

agreements were all executed in July and the bankruptcy court approved the settlement agreements in late July and early August Until the FCC required them to do so, the Opposing Parties took no voluntary action to disclose the settlement agreements The Opposing Parties reluctantly filed their settlement agreements in October 2003, presenting the Commission with a *fait accompli*

The Opposing Parties were obligated, under Section 1.935 of the Commission's Rules to seek FCC approval **before** the settlement agreements took effect. Not only did they fail to do so, but they now seek to withhold the settlement agreements from public scrutiny What the Opposing Parties fail to mention is that each settlement agreement contains language that bars Verizon, SBC and BellSouth from filing petitions or oppositions objecting to WorldCom's proposed transfer of licenses in this proceeding. Any such petition or opposition would have placed Verizon, SBC or BellSouth in breach of their settlement agreement Such an action would give WorldCom the right to sue the offending party Along with any other damages WorldCom could seek to recover, the offending party would be in jeopardy of having to return the "substantial monetary" rewards it received in return for its silence. There can be no doubt that as consideration for the settlement agreements, WorldCom bargained for and received from Verizon, SBC and BellSouth legally binding promises that they would not disclose information about WorldCom in this proceeding or otherwise oppose the transfer of FCC licenses and authorizations from WorldCom (debtor-in-possession) to MCI. In return, Verizon, SBC and BellSouth received "substantial monetary" payments.

Clearly, these types of settlement agreements must be filed with and approved by the Commission before they take effect. The Opposing Parties filed the settlement

agreements *not* as a *voluntary* act. On the contrary, filing them was absolutely mandatory under the requirements of Section 1.935 of the rules For this reason *Critical Mass*, which concerns information *voluntarily* produced, is inapposite.

To maintain the documents as confidential, the Opposing Parties must demonstrate that they meet the two prong *National Parks* test. The first prong of the test requires the Opposing Parties to demonstrate that disclosing the settlement agreements would impair the government's ability to obtain information. As discussed herein, the filing of the settlement agreements is required by Section 1.935 of the Rules. In a fit of hubris, BellSouth claims that if the Commission requires the disclosure of the settlement agreements, "The Commission can count on extensive legal battles when it seeks information from carries in the future "[4] It seems to Mrs. Snyder that BellSouth has become a little too big for its corporate britches and that a trip to the regulatory woodshed might be in order. BellSouth's strident protestations are designed to distract the Commission from the central fact that BellSouth, in failing to file the settlement agreement, violated Section 1 935 of the Commission's rules The Commission has broad spectrum of sanctions and forfeitures it can impose against a carrier that refuses to follow the Commission's rules and regulations. Needless to say, the Commission need not worry that, in the future parties, will not file settlement agreements because the Commission enforces its rules here

The second prong of the *National Parks* test is likewise not a hindrance to the disclosure of the settlement agreements. The Opposing Parties have failed to provide even a single example of how disclosure of the settlement agreements would cause

[4] BellSouth Opposition, at p 4

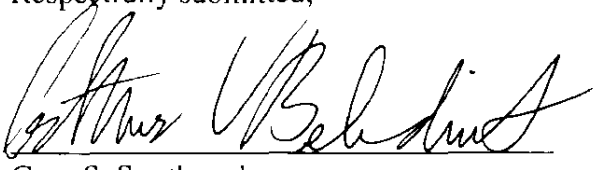
"substantial harm to the competitive position of the person from whom the information was obtained." The settlement agreements contain three pieces of information that should be placed in the public record of this proceeding, (1) the amount of the parties' claims, (2) the amount they received and (3) the language in the agreement that prevents WorldCom's competitors from filing petitions or oppositions in this proceeding.[5] These matters properly belong in the public record.

The old adage that, "one bad apple spoils the whole bunch," applies to this case WorldCom has corrupted Verizon, SBC and BellSouth For their part, Verizon, SBC and BellSouth have allowed themselves to be corrupted. As much as the parties may claim otherwise, this is not an arms length settlement of claims As SBC stated in its November 13, 2003, publicly filed letter, the Settlement Agreement provides for a "substantial monetary recovery." This, according to SBC "may be misconstrued by other creditors of WorldCom." But "misconstruction" of a document does not fall within the kinds of harm that *National Parks* addresses.

In entering into settlement agreements in violation of Section 1.935 of the rules, the Opposing Parties have knowingly and intentionally withheld information from the FCC By asking that these documents be treated as confidential they have sought to keep the material terms of their settlements concealed from the public Simply stated, the Opposing Parties have no interest which needs to be protected as a matter of law or policy. Accordingly, the settlement agreements should be made available for public inspection and comment.

[5] Counsel for Mrs Snyder has acknowledged that some of the attachments to the settlement agreements may contain confidential information and has indicated that he would interpose no objection if some or all

Respectfully submitted,

By. 

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of the attachments to the settlement agreements remained confidential

CERTIFICATE OF SERVICE

I, Sherry Schunemann, do hereby certify that a copy of the foregoing "Consolidated Reply to Oppositions to Margaret F. Snyder's Motion to Diclose Documents" was mailed by First Class U S Mail, postage prepaid or via email, this 17th day of December, 2003, to the following:

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